

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, which held that drilling operations in progress on the last day of the lease term did not qualify oil and gas lease W-35592 for a two year extension.

Affirmed.

1. Oil and Gas Leases: Drilling -- Oil and Gas Leases: Extensions

To qualify for a two year extension of an oil and gas lease pursuant to 30 U.S.C. § 226(e) (1970), it must be shown that actual drilling operations were diligently prosecuted on the leasehold on the last day of the lease term, with bona fide intent to complete a producing well, as demonstrated by circumstances; e.g., by a showing that the operation was thereafter expeditiously carried forward to such an extent that the effort constituted an acceptable test of a geologic stratum where it could reasonably be anticipated that commercial quantities of oil and/or gas might be discovered.

Appearances: D. L. Cook, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

D. L. Cook has appealed from the January 9, 1975, decision of the Wyoming State Office of the Bureau of Land Management which held, in effect, that the drilling operations in progress on the last day of the lease term were inadequate to qualify for an extension of the oil and gas lease.

The lease in question, W-35592, was segregated out of lease W-0203018 when part of the latter was included in the Dead Horse Creek Unit on June 21, 1972, thereby extending the term of W-35592 through June 21, 1974, as provided in 43 CFR 3107.4-3.

[1] On June 24, 1974, the lessee, Cook, executed and filed with the Geological Survey his affidavit which recited that he had commenced drilling operations on June 21, 1974, had drilled a sixteen-inch hole to a depth of 21 feet, set twelve inch conductor pipe and cemented the pipe in the hole, and was waiting for the cement to set at midnight. He further averred that he had contracted with a different drilling company "to drill a Parkman Formation test or to a depth of 7,000."

Some six months later, on December 20, 1974, the Geological Survey's Oil and Gas Supervisor for the Northern Rocky Mountain Area reported to the Wyoming State Office, BLM, as follows:

Our records show that a test well was commenced on the subject lease June 21, 1974, the expiration date of the lease, thus possibly making the lease eligible for a 2-year extension by drilling. However, the operator has failed to fulfill his obligation to timely drill the test to a legitimate depth. We, therefore, recommend that W-35592 be terminated effective June 21, 1974.

This, the entire text of the report, is singularly uninformative, and is barely adequate for its purpose. It does not indicate the source or the date of the information; what, if any, additional work has been accomplished; or why it is deemed to be inadequate to qualify the lease for extension. We further note that there is no prescribed "legitimate depth" per se, so that this phrase must be construed to mean that in the judgment of the Supervisor, the lessee has failed to proceed to a depth at which oil and/or gas might reasonably be anticipated in commercial quantities.

The statement of reasons for appeal filed by Cook, however, does not dispute the conclusion of the Oil and Gas Supervisor. Instead the appellant seeks to explain his failure by asserting:

There was a firm contract in existence. I was merely substituting one contractor (Circle A Drilling Co.) with a rig ready to move on for the other drilling contractor who did not wish to honor his contract.

I believe the decision is incorrect as it puts operator at the mercy of one contractor.

This is the complete text of the reasons supplied, and this statement, too, raises more questions than it answers. For example,

if the second contractor had a right ready to move onto the site, why didn't he? The apparent failure to proceed goes to the diligence with which the drilling operations were being prosecuted.

The statute provides, in pertinent part, that:

* * * Any lease issued under this section for land on which * * * actual drilling operations were commenced prior to the end of its primary term and are being diligently prosecuted at that time shall be extended for two years * * *.

30 U.S.C. § 226(e) (1970).

The implementing regulations are found at 43 CFR 3107.2 et seq. "Actual drilling operations are defined so as to include not only the physical drilling of a well, but the testing, completing or equipping of such well for the production of oil and gas." 43 CFR 3107.2-1(a). Obviously, these activities could not all be accomplished by midnight, or shortly thereafter, where drilling operations were commenced on the last day of the lease term. Therefore, the bona fide intent of the lessee and the diligence with which he carries out that intent must be tested in accordance with the regulation not only by the activity in progress at midnight of the last day, but by what transpires subsequently. Thelma M. Holbrook, 75 I.D. 329 (1968). Actual drilling operations must be conducted in such a way as to be an effort which one seriously looking for oil or gas could be expected to make in that particular area, given existing knowledge of geologic and other pertinent facts. 43 CFR 3107.2-2; Thelma M. Holbrook supra; Holdo Oil and Gas Co., A-30216 (January 11, 1965); Standard Oil Company of Texas, 71 I.D. 257 (1964); Solicitor's Opinion M-36657 (July 17, 1963).

Appellant's allegation of a breach of contract on the part of the first drilling contractor is not significant in this context. We have no means of adjudicating the respective rights of the contracting parties to determine where the fault lies as between them. If the expiration of the lease is attributable to the drilling contractor's breach of contract, appellant has a remedy at law for damages.

To qualify for the extension the evidence must show that actual drilling operations were diligently pursued on the leasehold on the last day of the lease, with bona fide intent to complete a producing well, as demonstrated by circumstances, e.g., by a showing that the operation was thereafter expeditiously carried forward to such an extent that the effort constituted an acceptable test of a geologic stratum where it could reasonably be anticipated that commercial quantities of oil and/or gas might be discovered.

There being no evidence that such was done in this instance, we find that the lease expired at midnight, June 21, 1974.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

I concur:

Martin Ritvo
Administrative Judge

I concur in the result:

Joseph W. Goss
Administrative Judge

